

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 30, 2008

DARRELL LAMAR FRITTS v. HOWARD CARLTON, WARDEN

**Direct Appeal from the Criminal Court for Johnson County
No. 5067 Robert E. Cupp, Judge**

No. E2007-01965-CCA-R3-HC - Filed May 1, 2008

The petitioner, Darrell Lamar Fritts, filed in the Johnson County Criminal Court a petition for a writ of habeas corpus, alleging that the sentence he is serving for second degree murder is illegal. The habeas corpus court denied the petition, and the petitioner appeals. Upon our review of the record and the parties' briefs, we affirm the judgment of the habeas corpus court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which D. KELLY THOMAS, JR., J., joined. J. CURWOOD WITT, JR., J., not participating.

Darrell Lamar Fritts, Mountain City, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On June 11, 1986, the petitioner pled guilty to burglary of an automobile and first degree burglary. The appellant received sentences of five years and six years, respectively, with the sentences to be served concurrently. The petitioner filed a habeas corpus petition challenging his plea bargain, which petition was denied by the trial court. On appeal, this court affirmed the denial. Darrell Lamar Fritts v. State, No. M2001-03126-CCA-R3-CO, 2003 WL 535946, at *1 (Tenn. Crim. App. at Nashville, Feb. 26, 2003).

On January 18, 1990, the petitioner was convicted of second degree murder, and he received a sentence of twenty-five years as a Range I standard offender. On appeal, this court affirmed his conviction. State v. Darrell Fritts, No. 132, 1992 WL 236152, at *10 (Tenn. Crim. App. at Knoxville, Sept. 25, 1992). Subsequently, the petitioner filed for post-conviction relief, challenging

his second degree murder conviction. On appeal, this court affirmed the denial of post-conviction relief. Darrell Fritts v. State, No. 03C01-9803-CR-00116, 1999 WL 604430, at *1 (Tenn. Crim. App. at Knoxville, Aug. 12, 1999).

Thereafter, the petitioner filed a petition for a writ of habeas corpus, contending that his sentences for the 1986 burglary convictions are void because the sentences should have been run consecutively, not concurrently, due to the fact he committed one of the offenses while on bail for the other. Additionally, the petitioner argues that his void 1986 burglary convictions should not have been used to enhance his later conviction for second degree murder. Thus, the petitioner contends that he should not have received a twenty-five-year sentence for the second degree murder conviction, the maximum allowable sentence. Instead, the petitioner asserts he should have been granted a fifteen-year sentence, the minimum sentence for the offense. Finally, the petitioner alleges that his sentence for second degree murder is void, contending that it should have been run consecutively to his burglary convictions because he committed the murder while on parole for the burglary convictions.

The habeas corpus court found that the petitioner failed to allege grounds on which relief could be granted; accordingly, the habeas corpus court denied the petition. On appeal, the petitioner challenges this ruling.

II. Analysis

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). As such, we will review the trial court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, § 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, "[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant's sentence of imprisonment or other restraint has expired." Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 995 S.W.2d at 83).

First, we will address the petitioner's contention that he committed the offense of first degree burglary while he was on bail for the offense of burglary of an automobile, and, therefore, the trial court's imposition of concurrent sentencing resulted in a void judgment. We note that as a

prerequisite to habeas corpus relief, a petitioner “must be ‘imprisoned or restrained of liberty’ by the challenged convictions.” Benson v. State, 153 S.W.3d 27, 31 (Tenn. 2004) (citing Tenn. Code Ann. § 29-21-101 (2000)). The petitioner has previously “conceded that he has already served his sentences for the burglary convictions.” Fritts, No. M2001-03126-CCA-R3-CO, 2003 WL 535946, at *1. Thus, the petitioner is no longer “imprisoned or restrained of liberty” by those convictions. Accordingly, he is not entitled to habeas corpus relief as to those convictions.

The petitioner also contends that the sentence he is serving for his second degree murder conviction is illegal because the trial court enhanced his sentence to the maximum allowable for that conviction based upon the purportedly illegal 1986 convictions for burglary. As we stated earlier, there is no proof that the 1986 burglary convictions were illegal. As such, the petitioner is not entitled to habeas corpus relief on this basis.

Additionally, the petitioner claims that his sentence for second degree murder is illegal because he committed the offense while on parole for his burglary convictions; thus, the trial court was required to order the sentence for second degree murder served consecutively to the burglary sentences. Our review of the record reveals that the judgment for the second degree murder conviction is silent as to the consecutive or concurrent nature of the sentence. “Both Tennessee Code Annotated section 40-28-123(a) and Rule 32(c)(3)(A) require that sentences for felonies committed while on parole be served consecutively to the sentence remaining for the paroled offense.” Hogan v. Mills, 168 S.W.3d 753, 756 (Tenn. 2005). Moreover, “Rule 32(c)(3) mandates that new sentences run consecutively to the prior sentence ‘whether the judgment explicitly so orders or not.’ Thus, the new sentences run consecutively to the prior sentence even if the judgment is silent in this regard.” Id. Therefore, the petitioner is not entitled to habeas corpus relief simply because the judgment for second degree murder is silent as to the consecutive or concurrent nature of the sentence. The habeas corpus court did not err in denying the petition.

III. Conclusion

Based upon the foregoing, we affirm the judgment of the habeas corpus court.

NORMA McGEE OGLE, JUDGE